

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 12, 2004

MELVIN ALEXANDER v. QUENTON WHITE

**Appeal from the Chancery Court for Davidson County
No. 02-3057-I Irvin H. Kilcrease, Chancellor**

No. M2003-00558-COA-R3-CV - Filed January 20, 2004

This is an appeal as of right by an inmate with the Tennessee Department of Correction who had filed a petition for declaratory judgment in the Davidson County Chancery Court seeking to have the court review the Department of Correction's calculation of his sentence. The Chancery Court entered an order which required the petitioner to comply with the statutory requirements of Tenn. Code Ann. § 41-21-801, *et seq.* and to submit a summons along with a copy of the petition for service upon the respondent. The Chancery Court dismissed his declaratory judgment petition for lack of prosecution due to the petitioner's failure to comply with its order. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed and Remanded**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, P.J., M.S., and WILLIAM B. CAIN, J., joined.

Melvin Alexander, Nashville, Tennessee, Pro Se.

Paul G. Summers, Nashville, Tennessee, for the appellee, Quenton White,¹ Commissioner for Department of Correction, State of Tennessee.

¹Quenton White succeeded Donal Campbell as Commissioner of the Tennessee Department of Correction. Accordingly, Quenton White has been substituted as the party defendant pursuant to Rule 19(c) Tenn. R. App. P. (when an officer of the state ceases to hold office, the officer's successor is automatically substituted as a party).

MEMORANDUM OPINION²

This is an appeal as of right by the petitioner, Melvin Alexander, who is an inmate with the Tennessee Department of Correction. Alexander filed a petition for declaratory judgment in the Davidson County Chancery Court seeking a review of the Department of Correction's calculation of his sentence. The Chancery Court dismissed his declaratory judgment petition for lack of prosecution. Specifically, the Chancellor dismissed the petition for declaratory judgment due to the failure of Petitioner to comply with the statutory requirements of Tenn. Code Ann. § 41-21-801, *et seq.* and Petitioner's failure to submit a summons along with a copy of the petition for service upon the respondent.

The petitioner filed the petition for declaratory judgment in the Davidson County Chancery Court on October 11, 2002. On October 16, 2002, the Chancery Court, *sua sponte*, entered an order requiring Petitioner to comply with the statutory requirements of Tenn. Code Ann. § 41-21-801 *et seq.* and to submit a summons along with a copy of the petition. The October 16 order contained an admonition, whereby Petitioner was advised that his case would be dismissed if he failed to comply with the requirements set forth in the order.

Thereafter, Petitioner filed an "In Forma Pauperis Declaration" which set forth a certificate of accounts indicating that Petitioner had an average balance in his trust account of \$76.89 over the prior six months. He also filed an "Affidavit of Information" which identified his prior lawsuits, as required under Tenn. Code Ann. § 41-21-805. Petitioner, however, failed to pay the filing fee or any portion thereof and failed to submit the summons as required by the October 16 order.

On December 9, 2002, the Chancery Court dismissed the petition due to Petitioner's failure to comply with the October 16, 2002 order. The order stated that the reasons for the dismissal were Petitioner's failure to remit a partial payment of the filing fee as pursuant to Tenn. Code Ann. § 41-21-807.³ On December 18, 2002, Petitioner filed a "Motion to Reconsider," in essence requesting that the Chancery Court "re-open" the case. Petitioner attached to the motion two letters. One of the letters was from the Clerk and Master informing Petitioner that he "must pay \$37.50 or twenty percent of what is in his trust account" and return that amount with a "summons for service." In the other letter, dated November 2, 2002, Petitioner had written to the court ostensibly offering to pay \$20 from his next earnings. Appellee characterizes the statement in the letter from Petitioner as a proposed payment plan. Appellee asserts that the proposed payment plan was non-compliant with

²Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

³The Chancery Court also dismissed a motion for summary judgment that had been filed by the petitioner, finding the motion to be moot due to the dismissal of the underlying civil action.

the October 16 order as was Petitioner's failure to submit a completed summons. The Chancery Court agreed, rejecting Petitioner's proposed payment plan and denying his motion to reconsider, stating that he had failed to comply with the court's October 16, 2002 order by not submitting a partial payment of his filing fee.

Our review of this appeal is governed by the abuse of discretion standard. "Under the abuse of discretion standard, a trial court's ruling 'will be upheld so long as reasonable minds can disagree as to the propriety of the decision made.' A trial court abuses its discretion only when it 'applies an incorrect legal standard, or reaches a decision which is against logic or reasoning or that causes an injustice to the party complaining.'" *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001).

"Only when a trial court has 'applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining' is the trial court found to have abused its discretion." *Bowers v. Gutterguard of Tennessee, Inc.* 2003 WL 22994302, *2 (Tenn. Ct. App., 2003) (citing *State v. Stevens*, 78 S.W.3d 817, 832 (Tenn. 2002) (quoting *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997))).

Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to propriety of the decision made." *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000); *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000). A trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999). The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

Eldridge, 42 S.W.3d at 85.

Tenn. R. Civ. P. 41.02 authorizes a trial court to dismiss a lawsuit due to a party's failure to comply with an order of the court. *See Manufacturers Consolidation Service, Inc. v. Rodell*, 42 S.W.3d 846, 864 (Tenn. Ct. App. 2000). In this matter, the Chancellor dismissed the petition for declaratory judgment due to Petitioner's failure to comply with the October 16, 2002 order; specifically, Petitioner's failure to comply with the statutory requirements for an inmate to proceed *in forma pauperis* and the petitioner's failure to file a summons. Such a failure is a proper basis for the dismissal of a lawsuit. *See Preston v. Lutche*, No. M2001-03153-COA-R3-CV, 2003 WL 61247 (Tenn. Ct. App., January 9, 2003). Based upon the foregoing, we find that the trial judge did not apply an incorrect legal standard and that reasonable minds would find the decision of the Chancellor proper. Therefore, the Chancellor did not abuse his discretion.

Accordingly, we affirm the judgment of the trial court. Costs are assessed against Appellant/Petitioner, Melvin Alexander.⁴

FRANK G. CLEMENT, JR., JUDGE

⁴ Petitioner filed an “In Forma Pauperis Declaration” in the trial court. Parties proceeding as poor persons are not permanently relieved from responsibility for the costs. Once costs have been taxed by the court, the party proceeding as a poor person is responsible for those costs and they may be collected as provided by law. Tenn. R. App. P. 18.